No. 909

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1966

EDWARD LIMPERIS, TRUSTEE
IN BANKRUPTCY OF PROCESS-MANZ PRESS, INC.
*Petitioner,*

v.

A. J. ARMSTRONG CO., INC.
*Respondent.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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v.

**A. J. ARMSTRONG CO., INC.**
*Respondent.*

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## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

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Petitioner prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit, entered in the above-entitled case on July 29, 1966.

## CITATIONS TO OPINIONS BELOW

The memorandum opinion of the referee in bankruptcy (R. 153-202) is unreported. The opinion of the District Court (R. 331-63), printed in Appendix E hereto, *infra* p.

31, is reported in 236 F. Supp. 333. The majority opinion of the Court of Appeals, printed in Appendix B hereto, *infra* p. 2, is reported in ..... F. 2d. ..... The dissenting opinion, Appendix B, *infra* p. 14, is also there reported.

## JURISDICTION

The judgment of the Court of Appeals was entered on July 29, 1966. Rehearing *en banc* was denied (with the dissenting judge voting for rehearing) on October 3, 1966. Appendix D, *infra*, p. 30. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

## QUESTIONS PRESENTED

1. Where the bankruptcy court "obviously" has summary jurisdiction over some of the property over which a claimant asserts a possessory right and claim, is it necessary to adjudicate that claimant's rights over the remainder of the property by plenary action before the bankruptcy court's summary jurisdiction can be exercised?

2. May the bankruptcy court in the exercise of its summary jurisdiction determine the question of lawfulness of possession by one asserting the status of an adverse claimant?

3. May an intervenor in a bankruptcy proceeding—who (a) has asked the district judge to reverse the referee's appointment of a receiver, (b) entered into an agreement with the court after the court has rejected an asserted agreement between the receiver and the intervenor, and (c) filed a motion asking for the return of property in the court's possession—assert the status of an adverse claimant?

4. May the bankruptcy court, when its summary jurisdiction is challenged, conduct a combined hearing on the jurisdictional issue and the merits without a preliminary ruling on the issue of its jurisdiction, particularly where the bankruptcy court "obviously" has summary jurisdiction over some of the property?

## STATUTE INVOLVED

The statutory provision involved is §2a(7) of the Bankruptcy Act, 11 U.S.C. §11a(7). It is printed in Appendix A hereto, *infra*, p. 1.

## STATEMENT

This is an involuntary bankruptcy proceeding filed on November 23, 1962 involving Process-Manz Press, Inc. (R. 1, 155.) The bankrupt had, for over 90 years, operated a large printing plant occupying over half a square block in Chicago. (R. 14, 154-55, 854.) It had approximately 300 employees. (R. 14.)

In the course of the proceeding, some 500 creditors filed claims aggregating approximately $1,181,000. (R. 163, 189, 736, 749). Tax claims filed, including a claim by the United States for withheld income taxes in the amount of $107,000, aggregated about $140,000. (R. 189, 1537. Wage claims in excess of $40,000 were filed. (R. 189.) Seventeen claimants under conditional sales contracts or chattel mortgages filed reclamation petitions. (R. 186.)

Following adjudication, petitioner, trustee in bankruptcy, filed a petition to sell at public auction the assets of the bankrupt in the court's possession. (R. 50.) In response thereto, respondent, A. J. Armstrong Co., Inc., filed a motion asserting the status of an adverse claimant and praying the return to it of all these assets. (R. 60.)

Respondent's motion was predicated upon (1) an asserted lien on all the assets in the amount of $3,450,000 created under a trust deed, chattel mortgage and accounts receivable financing agreement; (2) a seizure of all the assets by respondent *two days (one of which was Thanksgiving) before the filing of the bankruptcy;* and (3) an agreement with the receiver. Petitioner opposed respondent's claim on the grounds that (1) the possession of the respondent was unlawful and (2) respondent had intervened in the proceeding (by an agreement made directly with the court after the court had rejected the asserted agreement with the receiver). Petitioner also asserted that respondent's claim to the assets was invalid since it was based on fraudulent transfers which were voidable under §§67d and 70e of the Bankruptcy Act and prayed for subordination of respondent's entire claim. (R. 83, 104, 122.)

Over the objection of respondent, the referee conducted a combined hearing on the jurisdictional issue and the merits of respondent's claim to the bankrupt's property as framed by the pleadings. The referee held 33 hearings over a period of seven months. The record thereof consists of 3,000 pages of transcript and over 125 exhibits. Respondent produced 13 witnesses and offered 66 exhibits.

At the conclusion of the hearings the referee found that respondent had intervened in the proceeding and that its possession of the bankrupt's assets was unlawful* and overruled the motion of respondent objecting to the summary jurisdiction of the bankruptcy court. The referee's order also invalidated respondent's claim to the assets on the ground of fraud voidable under §§67d and 70e of the Bankruptcy Act and subordinated respondent's claim

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* The referee's findings on these points appear in the appendix to the dissenting opinion in the Court of Appeals, *infra*, Appendix B, pp. 18-28.

to the claims of all general creditors. The order also directed a sale of the assets free and clear of respondent's asserted lien. (R. 153-202.)

The invalidation and subordination of respondent's claim were based upon (1) respondent's demand that the major portion ($1,438,000) of a $2,500,000 loan secured by the assets of the bankrupt be used to acquire the stock of the bankrupt from two former stockholders in order that the stock could be pledged to respondent as collateral to secure the loan and (2) respondent's arrangement of and participation in the illegal redemption (coincident with the loan) of nearly $2,000,000 of the preferred stock of the bankrupt, all at a time when respondent knew that the bankrupt's cash position was extremely poor and at a time when the bankrupt was indebted to its creditors in the approximate amount of $588,000. (R. 159-62, 163-67, 192-94, 1376, 1503, 1513-14, 1533, 1555-65, 1566-67; Add. R. 25) The referee found that "the direct and proximate result" of this transaction "was to cause the bankruptcy." (R. 184, 193.)

Other bases for subordination included respondent's virtual ownership of over 91% of the stock of the bankrupt, respondent's complete control over the bankrupt's income and respondent's unconscionable conduct in its dealings with the bankrupt and its creditors over a 13-month period. (R. 164-71, 194-97.) An example of the last was respondent's financing of accounts receivable created by work done by the bankrupt; respondent paid the proceeds of these accounts to the bankrupt's parent company over the bankrupt's complaint. (R. 170-71, 814-15, 819-20.)

Respondent petitioned for review of the referee's order. (R. 208-99.) During the process of review, respondent obtained a stay of the sale of the assets by meeting the conditions of stay imposed by the referee and affirmed by both the District Court and the Court of Appeals. One of these conditions was the posting of two corporate surety

bonds aggregating $3,000,000 to protect the general creditors and the reclamation creditors from depreciation and obsolescence of the assets during the period of review. (R. 309-24, 330.)

Upon review the District Court affirmed the referee's order in its entirety, observing that the record compelled the referee to find that the transfers to respondent by the bankrupt in December, 1961 were void under §67d (2)(b), (c) and (d) of the Bankruptcy Act. The District Court also characterized respondent's conduct as "unfair, inequitable, unconscionable, and fraudulent." *In re Process-Manz Press, Inc.*, 236 F. Supp. 333, 348 (N.D. Ill. 1964).

The Court of Appeals, with Judge Swygert dissenting, reversed. The majority, *without holding a single finding of fact erroneous,* held that respondent had not intervened in the proceeding and that the question of the legality of respondent's possession was for a plenary suit, not for the bankruptcy court in the exercise of its summary jurisdiction. The majority did rule, however, that the referee had summary jurisdiction as to certain property which respondent "obviously had no right to possess." It also held that "in determining there was fraud the referee went beyond the limit for determination of summary jurisdiction." The dissenting judge would have adopted the reasoning of the District Court and affirmed the judgment. *In re Process-Manz Press, Inc.*, ..... F. 2d ..... (7th Cir. 1966); Appendix B, *infra,* pp. 2, 14.

Subsequent to the filing of the appeal from the judgment of the District Court, petitioner filed, at the direction of the referee, a plenary action seeking the same relief as that granted in the summary proceeding. This action, filed to toll the statute of limitations, sought relief in the alternative pursuant to Federal Rule 8(a). (R. 1062-75.) The pleadings in this suit were certified to the Court of Appeals and were part of the record before it. (R., Vol. V, 1-122.)

## REASONS FOR GRANTING THE WRIT

1. The decision below is in conflict, to the extent hereinafter stated, with decisions of other Circuits on all four questions presented.

On the first question, the holding of the court below denying *res judicata* effect in a plenary action to its holding that the referee had summary jurisdiction "with respect to property over which Armstrong took possession but which it obviously had no right to possess" conflicts in principle with decisions of the Second, Fifth and Ninth Circuits: *Giffin* v. *Vought,* 175 F. 2d 186 (2d Cir. 1949); *Ullman, Stern & Krausse* v. *Coppard,* 246 Fed. 124 (5th Cir. 1917); *Johnson* v. *Wilson,* 118 F. 2d 557 (9th Cir. 1941). Respondent claimed the equity of the bankrupt in property claimed by the reclamation creditors. (R. 261.) Since the Court below held that the referee "obviously" had summary jurisdiction as to this property, his adjudication of respondent's claim thereto is *res judicata* in a plenary action under these decisions. See *Katchen* v. *Landy,* 382 U.S. 323, 334 (1966).

In substance, the holding of the Court below that the "prolonged hearing" before the referee "must go largely for naught" means that the exercise of his conceded summary jurisdiction must be ignored pending the outcome of a plenary action.

On the second question (determination of possession), the decision of the Court below conflicts in principle with that of the Fifth Circuit in *American Mannex Corp.* v. *Huffstutler,* 329 F. 2d 449 (5th Cir. 1964). The Fifth Circuit there noted:

> "We accept the proposition that [the pipe] was under the dominion and control of respondent Mannex

> [adverse claimant] and had been since September 25 when the actions, here under review, occurred. Far from recognizing this physical fact as any obstacle, the Trustee-appellee contends that the pipe was in the 'constructive' possession of Trice [bankrupt], and this is enough both as to the form of the proceeding and the substantive rights. We recognize, of course, that there is a vast amount of case law which speaks in these terms. But it seems to us that the matter is greatly simplified by approaching it for what it really is—the question whether the party has a *legal right* to maintain the actual, physical possession." 329 F. 2d at 451.

Even if respondent's claim to the assets which it seized was real and substantial, the lawfulness of respondent's possession of those assets was still a question for the bankruptcy court in determining the issue of its own jurisdiction under the decision in *Mannex*.

On the third question (the assertion by an intervenor of the status of an adverse claimant), the holding below conflicts with that of the Tenth Circuit in *O'Dell* v. *United States*, 326 F. 2d 451 (10th Cir. 1964), where the Court held that the claimant, by filing a motion to impound certain funds, had invoked and thereby consented to the summary jurisdiction of the bankruptcy court and could not thereafter challenge it. The decision below also conflicts in principle with that of the Fourth Circuit in *Continental Cas. Co.* v. *White*, 269 F. 2d 213, 216 (4th Cir. 1959), in which the court observed that the 1952 amendment to §2a(7) of the Bankruptcy Act was not intended to diminish the jurisdiction of the bankruptcy court where the creditor has come into court voluntarily—in that case by filing a claim.

The respondent here invoked the jurisdiction of the District Court voluntarily (1) in asking it to reverse the referee's order appointing a receiver for "a selfish mo-

tive"—"the collectibility of a million dollars worth of receivables" (R. 1766-72, 1773-74, 1775), (2) in agreeing to an order which provided that neither petitioner nor respondent should be prejudiced "in making or advancing of any contention which * * * either * * * might make with respect to questions of possession, the right to return thereof, jurisdiction, validity or otherwise" (R. 36; Add. R. 20-21), and (3) in filing a motion asking for the return of property (R. 60). Cf. *In re Hollingsworth & Whitney Co.*, 242 Fed. 753, 755-56, 758-59 (1st Cir. 1917).

On the fourth question, a conflict exists among the Circuits concerning the scope of a hearing when summary jurisdiction is challenged. The Court below held that the referee improperly "fused the inquiry into his summary jurisdiction with a trial on the merits." A similar view has been expressed by the Fifth Circuit. *Jackson* v. *Sports Company of Texas, Inc.*, 278 F. 2d 716, 718-19 (5th Cir. 1960). The Second, Eighth and Tenth Circuits have taken an opposite view, at least under circumstances similar to those present here. *Buss* v. *Long Island Storage Warehouse Co.*, 64 F. 2d 338 (2d Cir. 1933); *Teasdale* v. *Robinson*, 290 F. 2d 108 (8th Cir. 1961); *Fish* v. *East*, 114 F. 2d 177, 189 (10th Cir. 1940). In *Buss* the Second Circuit observed:

> "Two questions arise: The summary jurisdiction of the bankruptcy court; Cochrane's right to stop the goods *in transitu*. It chances that the two coalesce, so we proceed to the merits first." 64 F. 2d at 339.

In *Teasdale* v. *Robinson, supra,* the Eighth Circuit observed:

> "The Referee in bankruptcy held a hearing upon the question of his jurisdiction, as well as upon the merits of the Trustee's petition. That was proper practice, and counsel for the Robinsons did not contend otherwise, but throughout the hearing preserved objection to the exercise of summary jurisdiction by the Referee." 290 F. 2d at 112.

The Fifth Circuit noted this inconsistency in *Jackson* v. *Sports Company of Texas, Inc., supra,* 278 F. 2d at 717.

The decision below also conflicts in principle with those of the five Circuits which have ruled upon the question and have uniformly held that an order sustaining summary jurisdiction only, without deciding the merits, is interlocutory and therefore not appealable. *In re Federal Photo Engraving Corp.,* 54 F. 2d 628 (2d Cir. 1931); *Lieberman* v. *Bancroft,* 69 F. 2d 202 (3d Cir. 1934); *Universal Oil Products Co.* v. *Casden Petroleum Corp.,* 178 F. 2d 495 (5th Cir. 1949); *Kelso* v. *Maclaren,* 122 F. 2d 867 (8th Cir. 1941); *Trieber* v. *England,* 237 F. 2d 117 (9th Cir. 1956), *cert. denied,* 352 U.S. 967 (1957); *In re Christ's Church of the Golden Rule,* 172 F. 2d 523 (9th Cir. 1949). These decisions in substance permit the denial on a reserved basis of a motion challenging summary jurisdiction and a combined hearing on jurisdiction and the merits and require participation on the merits by the adverse claimant.* They explain the quoted view of the Eighth Circuit in *Teasdale* v. *Robinson,* 290 F. 2d 108 (8th Cir. 1961).

2. This Court should re-examine *Harrison* v. *Chamberlain,* 271 U.S. 191, 194 (1926), upon which the majority opinion below relies, in the light of developments in the past forty years. The inconsistency in the decisions concerning the scope of a hearing when the summary jurisdiction of a bankruptcy court is challenged may be traced to language therein that "the court may enter upon a *preliminary inquiry* to determine whether the adverse claim is real and substantial or merely colorable." (Emphasis supplied.)

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* Participation on the merits does not waive a timely objection to summary jurisdiction. *Cline* v. *Kaplan,* 323 U.S. 97, 100 (1944).

The earlier reluctance on the part of this Court and many Courts of Appeal to view the exercise of summary jurisdiction by referees in bankruptcy in a favorable light was attributable to prejudice prevalent during the years when the compensation of referees was based on a percentage of assets administered. See Rochelle and King, *Summary Jurisdiction in Bankruptcy: Katchen* v. *Landy and Questions Left Unanswered,* 1966 Duke L. J. 669, 671. The direct financial interest of the referee in the outcome of a proceeding before him was understandably a basis for this reluctance. Cf. *Tumey* v. *Ohio,* 273 U.S. 510 (1927). In 1946 the Referees' Salary Act eliminated the fee system of compensation and established a salary system under the supervision of the Judicial Conference of the United States and the Administrative Office of the United States Courts. See 2 COLLIER, BANKRUPTCY ¶40.01 (14th ed. 1966); Rochelle and King, *A Proposal to Raise Bankruptcy Courts to District Court Level,* 13 Kan. L. Rev. 391, 393 (1965). With the enactment of this legislation the ground for this underlying prejudice was eliminated.

Also, since 1926 the Courts of Appeal of five Circuits have uniformly established the non-appealability for want of finality of an order determining only that summary jurisdiction exists. See cases cited *supra,* p. 10.* The Third

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* The assertion of an adverse claim presents "a controversy arising in proceedings in bankruptcy" under Bankruptcy Act §24a, 11 U.S.C. §47a, which governs appeals from a District Court to a Court of Appeals. Review of action of the referee by the District Court is governed by Bankruptcy Act §39c, 11 U.S.C. §67c. While a District Court may in its discretion review an order of a referee determining only that summary jurisdiction exists [and if it does so, this is not a ground for complaint by the trustee in the Court of Appeals, *Sulmeyer* v. *Pfohlman,* 329 F. 2d 915, 917 (9th Cir. 1964)], the District Court is not obligated to review such an order. *Trieber* v. *England,* 237 F. 2d 117 (9th Cir. 1956), *cert. denied,* 352 U.S. 967 (1957), involved such an order, an appeal of which was dismissed at all levels of review.

Circuit has observed that the requirement of finality as a condition of appeal "applies equally to action taken by a referee in bankruptcy." *In re Prindible,* 115 F. 2d 21, 22 (3d Cir. 1940). The point in a proceeding at which a referee determines that he will hear the merits—whether at the outset or in the middle—is immaterial from a practical standpoint.

Two factors made the instant case one appropriate at the outset for a combined hearing on jurisdiction and the merits: (1) the intermixture of property seized by respondent, some of which, as the Court below held, it "obviously had no right to possess", and (2) the complicated factual issues presented by the pleadings. The referee observed, "To separate these matters completely might be difficult." (R. 471.) *Harrison* v. *Chamberlain,* 271 U.S. 191 (1926), involved neither of these factors, only a specific fund of money held by a stranger to the proceeding.

*Harrison* v. *Chamberlain* has become obsolete as a guideline for the conduct of hearings before the bankruptcy court in the exercise of its summary jurisdiction. This Court should reconsider *Harrison* v. *Chamberlain* in the light of the foregoing developments. It should clarify that the practice in bankruptcy litigation in this respect follows the practice in civil and criminal litigation. See General Order 37; Federal Rules of Civil Procedure 12(b) and 54; *Blank* v. *Bitker,* 135 F. 2d 962 (7th Cir. 1943); and *Roche* v. *Evaporated Milk Ass'n,* 319 U.S. 21 (1943).

3. The questions presented are important in the uniform and proper administration of the bankruptcy laws.

The ruling of the Court below frustrates the chief objective of the bankruptcy laws, " 'to secure a prompt and effectual administration and settlement of the estate of all bankrupts within a limited period.' " *Katchen* v. *Landy,*

382 U.S. 323, 328 (1966). An otherwise meaningful remedy to creditors is thereby emasculated. The ruling undermines the concept of possession as the basis for the exercise of summary jurisdiction. It furnishes an incentive to illegal seizure by any claimant standing to benefit from the delay inherent in a plenary proceeding.

Although phrased in terms of jurisdiction, the issue of summary versus plenary jurisdiction has always been regarded as one of procedure. *Harris* v. *Avery Brundage Co.*, 305 U.S. 160, 164 (1938); *MacDonald* v. *Plymouth County Trust Co.*, 286 U.S. 263, 267-68 (1932). Litigation over this issue is frequent. Moreover, it is wasteful. The instant controversy on this wholly procedural point has already imposed an idleness on the assets in question for almost four years. The annual cost of maintenance and preservation of these assets has been $175,000. (R. 318.) The total cost since February 14, 1963, the date of filing of respondent's motion objecting to summary jurisdiction, has been almost $700,000.

Note has been taken of the great waste involved in this type of litigation. SANBORN, COMMITTEE REPORT TO NATIONAL JUDICIAL CONFERENCE, August 21, 1944, quoted in MACLACHLAN, BANKRUPTCY §195, n. 24 (1956); Ferguson, *The Consensual Basis of Subject-Matter Jurisdiction In Matters of Bankruptcy: Fact and Fiction*, 14 Rutgers L. Rev. 491 (1960). In his cited article Professor Clarence Clyde Ferguson, Jr. (now Dean and Professor of Law at Howard University) observes (at p. 491):

> "Yet, when jurisdictional doctrine becomes so confused as to become a fertile source of wasteful, asset draining litigation rather than an intelligible guide to efficient adjudications and administrations, then the state of such doctrine itself might be characterized as at least a current problem of bankruptcy administration."

The author subsequently (at p. 513) summarizes:

> "The matter of summary v. plenary, however, might, in the light of the real differences between the two proceedings, amount to little more than a tempest in a teakettle were it not for the right to jury trial."

Significantly, respondent has no right under the Seventh Amendment or Federal Rule 38 to a jury trial in a plenary suit—one in equity to avoid fraudulent transfers. *Damsky* v. *Zavatt,* 289 F. 2d 46, 53 (2d Cir. 1961); *Johnson* v. *Gardner,* 179 F. 2d 114 (9th Cir. 1949), *cert. denied,* 339 U.S. 935 (1950). The judgment of the Court below accords respondent no procedural advantage that it did not enjoy in the summary proceeding. In his above cited article (at p. 516) Professor Ferguson advocates adoption of the following view in this situation:

> "Where there is no right to a plenary proceeding *with* jury trial, the bankruptcy court ought to adjudicate the complete controversy. The mere claim to a plenary proceeding without the additional right of trial by jury is not sufficiently substantial to overcome the interests in finality of adjudication and speedy and expeditious administration of the estate, since summary adjudication, fairly conducted, clearly affords the adverse claimant due process."

In connection with Professor Ferguson's suggestion, note may be taken of the observation of the Fifth Circuit in *American Mannex Corp.* v. *Huffstutler,* 329 F. 2d 449 (5th Cir. 1964), at 450, in footnotes 1 and 2 and the accompanying text; of General Order 47; and of 2 COLLIER, BANKRUPTCY ¶23.02, p. 442 (14th ed. 1966).

4. The majority opinion below is plainly erroneous. It is in conflict with decisions of this Court. It ignores the climate created by this Court's most recent decision on summary jurisdiction, *Katchen* v. *Landy,* 382 U.S. 323

(1966). No decision supports (or is cited to support) the holding below that the question of lawfulness of possession is one for the plenary rather than for the summary proceeding. In *Taubel-Scott-Kitzmiller Co.* v. *Fox,* 264 U.S. 426 (1923), this Court observed that a bankruptcy court

> "... may conclude, where it lacks actual possession, that the physical possession held by some other persons is of such a nature that the property is constructively within the possession of the court." 264 U.S. at 433.

The decision below is internally inconsistent. Respondent's claim to the right to seize the property in question is derived from one set of documents: a trust deed, a chattel mortgage, an installment note and a letter requiring a fifteen day notice by registered mail for an actionable default. No such notice was given. The chattel mortgage specifically excludes "any goods, wares or merchandise which are dealt in or sold by [the bankrupt] in its regular course of business." Yet respondent seized this specifically excluded property and the reclamation creditor property and asserted the position of an adverse claimant with respect to all of that property.

Paradoxically, the majority opinion below holds that respondent "obviously had no right to possess" the excluded inventory and the property claimed by the reclamation creditors and yet holds that the questions of (1) the propriety of respondent's seizure of the balance of the property and (2) the merits of respondent's claim to *all* property seized by it must be deferred to a plenary suit. The majority's perplexing opinion in this respect presents untold complexities in the administration of this very substantial bankrupt estate.

In short, after conceding that the referee "obviously" had summary jurisdiction to adjudicate respondent's claim to some of the property (which required consideration of the merits), the Court below somehow determined that unless his adjudication was binding on all property seized by respondent, it was binding on none. No authority is cited for this startling proposition. The requirement of a plenary suit was held a "meaningless gesture" under similar circumstances in *Katchen* v. *Landy*, 382 U.S. 323, 334 (1966).

A hostile philosophy concerning the exercise of summary jurisdiction by referees in bankruptcy permeates the majority opinion below. The opinion relies entirely upon decisions rendered at a time when reviewing courts looked with a jaundiced eye upon the exercise of summary jurisdiction by referees. The reason for the prejudice has been removed, but the prejudice lingers on in the majority opinion. The opinion leaves the impression that if the findings and conclusions had been reached initially by a district judge, the point of view would be different. It entirely ignores the fact that they have been fully approved by the chief district judge (before whom respondent could have offered additional evidence under General Order 47).

## CONCLUSION.

The problems presented by this petition deserve, if indeed they do not demand, the attention of this Court. Economy and expedition are dominant considerations in the administration of the Bankruptcy Act. In cases like the instant one they may be achieved without sacrifice of any procedural right. This Court should initiate a change in the philosophy of the Courts of Appeal toward the exercise of summary jurisdiction by referees in bankruptcy.

At a time when the backlog of pending cases is mounting to an alarming state, antiquated procedural methods which have no relationship to the merits of a controversy and which require senseless, circuitous litigation should be discarded in the interest of promoting prompt justice. The continuing great waste in litigation over the wholly procedural point of summary jurisdiction can be substantially reduced by a clarification from this Court.

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

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